IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9922 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHAL @ ANTENA @ SHISUPAL JAGDISHBHAI BHADORIA

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

MR CR SHUKLA for MR AM PAREKH for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 21.05.2003 passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 21.5.2003.

2. The grounds served upon the petitioner and as placed on record reveal that the detaining authority took into consideration the fact that in all three offences came to be registered against the petitioner on 8.1.2003, on 10.1.2003 and on 19.5.2003 under Sections 66(1)(b), 65(e), 116(1)(b) and 81 of the Bombay Police Act. The detaining authority further relied upon two in-camera statements recorded by the sponsoring authority on 19.5.2003 and 20.5.2003 and verified by the detaining authority on 20.5.2003 revealing incidents of 15th of April, 2003 and 3rd May, 2003. Both these incidents are unreported to the police. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr.CR Shukla for Mr.A.M. Parekh for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, this case can be discussed and be decided on the sole ground whether there was any material before the detaining authority to reach to the subjective satisfaction that the objectionable activities of the petitioner was prejudicial to the maintenance of public order. In this respect, if the grounds are perused, the fact that the registration of the crimes under the Bombay Prohibition Act for having possession of country liquor, by no stretch of reaching, can be said to be the material to reach to the subjective satisfaction that the registration of crimes, ipso fact, is an activity prejudicial to the public order. The cases registered against the petitioner all are pending before the competent court. So far as the in-camera statements are concerned, from perusing the statements, it is clear that, those incidents are more individual disputes, picked up by the petitioner than the activities involving the society at large. The incidents occurred on 15th April, 2003, in which the witness alleged to have been beaten by the petitioner on suspicion that the witness was informing the police about the illegal activities of

selling country liquor by the petitioner while in the other incident occurred on 3rd of May 2003, the petitioner demanded vehicle from the witness for the transport of country liquor, and on refusal, the witness was beaten. These cases also can hardly be said to be affecting the public order or even public tempo of life. It is the potentiality of the act to disturb the even tempo of life of community, which makes it prejudicial to the maintenance of public order. There was no material before the detaining authority that by the activities of the petitioner, the public order was disturbed. If the statements of the witnesses are taken on their face value, at the most, they can be said to be problems of law and order, and not the breach of the public order. These activities cannot be said to be affecting the public at large for even tempo of the society. Therefore that the only conclusion can be deduced is that there was no material before the detaining authority to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to the public order. The order impugned therefore is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 21.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair